

REMARKS

While Applicant does not disagree that the claims in this case are directed to distinct species, Applicant does believe that the restriction requirement has been improperly made. M.P.E.P. § 811 provides that before making a restriction requirement after the first action on the merits, the Examiner will consider whether there will be a serious burden if restriction is not required (emphasis added). Applicant believes this requirement applies both to a restriction of claims and election of species. While the Office Action asserts there will be a serious burden on the Examiner, there is no explanation as to what the burden would be, nor is it seen how such a burden now exists after four (4) Office Actions, on the merits, in which the claims presented are similar to those presented in the Amendment And Petition For Extension Of Time filed December 8, 2003. Accordingly, Applicant believes the election requirement has been improperly made. Nonetheless, Applicant provisionally elects to proceed with prosecution of the First Species, shown in Figure 2. Claims 1-4, 6, and 14, and new Claims 16-21 read on the elected Species.

Claims 1 and 14 have been amended to incorporate the changes discussed with the Examiner on March 4, 2004. New Claims 17-21 are method claims corresponding to apparatus Claims 1-4 and 6, respectively. Applicant notes that while the Office Action states that no claims are generic, Applicant has added Claim 16, which is believed to be allowable for the same reasons as are the existing independent claims, and which is generic to all the identified Species. Upon allowance of Claim 16, Applicant requests rejoinder of the claims directed to the non-elected Species, and that Claims 7-13 and 15 be allowed as well.

As to the telephone interview of March 4, 2004, referred to in the Office Action, the description of that interview in the Office Action is, in most respects, correct. Applicant's representative who conducted that discussion with the Examiner notes, however, that during the telephone interview, the Examiner merely advised that he would be issuing a restriction requirement, and did not in fact identify the particulars of the restriction requirement. As such, there was no request for an oral election.

As noted above, Applicant elects to proceed with prosecution of the First Species, shown in Figure 2, of which Claims 1-4, 6, and 14, and new Claims 16-21 read on the elected Species.

Favorable further consideration and early passage to issue of the present application are respectfully requested.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,



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